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Novartis Pharmaceuticals Corporation

25 PLEXXIKON INC.,

26 Plaintiff,

27 v.

28 NOVARTIS PHARMACEUTICALS
CORPORATION,

Defendant.

Case No. 4:17-cv-04405-HSG

JOINT PROPOSED VERDICT FORM

Date: December 3, 2019
Time: 3:00 PM
Ctrm: 2 – 4th Floor
Judge: Honorable Haywood S. Gilliam, Jr.

VERDICT FORM

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term that appears in the questions below.

QUESTION NO. 1. Has Novartis proved by clear and convincing evidence that any of claims 1, 2, 4-6, 9, 11, and 12 of U.S. Patent No. 9,469,640 are invalid?

For each of claims 1, 2, 4-6, 9, 11, and 12, please check “Yes” (for Novartis) or “No” (for Plexxikon).

<u>Claim</u>	<u>YES (for Novartis)</u>	<u>NO (for Plexxikon)</u>
1		
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Please continue to Page 2.

1 **QUESTION NO. 2: Has Novartis proved by clear and convincing evidence that any of claims 1, 2,**
 2 **4-9, 11, 12, and 14-19 of U.S. Patent No. 9,844,539 is invalid?**

3 For each of claims 1, 2, 4-9, 11, 12, and 14-19, please check “Yes” (for Novartis) or “No” (for
 4 Plexxikon).

<u>Claim</u>	<u>YES (for Novartis)</u>	<u>NO (for Plexxikon)</u>
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24 If you answered YES for every claim listed in Question 1 *and* every claim listed in Question 2,
 25 please turn to page 5.

26 If you answered NO for any claim listed in Question 1 *or* Question 2, please continue to Page 3.

1 **QUESTION NO. 3: Has Plexxikon proved by the preponderance of the evidence that Novartis's**
2 **infringement of one or more claims of U.S. Patent Nos. 9,469,640 or 8,844,539 was willful?**

3 YES _____ NO _____

4
5 If you answered YES, continue to Question No. 4. If you answered NO, then please continue to Page 4.

6
7
8 **QUESTION NO. 4: If you answered YES to Question 3, during what period of time do you find**
9 **Novartis's infringement to have been willful?**

10
11 From _____ to _____.

12
13 Please continue to Page 4.

1 **QUESTION NO. 5: What sum of money do you find, by a preponderance of the evidence, would**
2 **fairly and reasonably compensate Plexxikon for Novartis's infringement?**

3
4 \$ _____

5 **PLEXXIKON'S PROPOSED QUESTION NO. 6: Is the amount of damages you found in Question**
6 **5 a one-time payment for the life of the patent, or a payment for past sales through the last date of**
7 **sales data only?**

8
9 _____ One-time payment for the life of the patents

10 _____ Payment for past sales through the last date of sales data only
11

12 **NOVARTIS'S PROPOSED QUESTION NO. 6: Is the amount you found in Question 5 a one-time**
13 **lump sum for the life of the patents, or for past sales only?**

14
15 _____ One-time lump sum for the life of the patents

16 _____ For past sales only
17

18 Please continue to Page 5.
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1 Your work is done. Please sign and date the verdict form.
2

3 **We, the jury, unanimously agree to the answers to the questions set out above, and return**
4 **them under the instructions of this Court as our verdict in this case.**

5 **Date:** _____

6 **Foreperson**

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1 **I. PLEXXIKON'S POSITION**

2 The parties dispute one aspect of Question 6. Question 6 seeks to know whether the jury's
3 damages award in response to Question 5 is a fully paid-up lump sum for the life of the patent or whether
4 it is a payment for past infringement only, with future damages to be determined. Plexxikon's
5 formulation of the question makes clear that in the event the jury does not choose to award damages in
6 the form of a fully paid-up license, the jury would be assessing damages through the end of the period for
7 which it was presented with sales data. That is the sales data the parties' experts will use as their royalty
8 base, and—given that sales data past August 2019 is not in the record—the only basis on which the jury
9 will rationally be able to assess damages retroactively. Novartis's "past sales" formulation is intended to
10 suggest that the damages award includes periods of time for which Novartis did not produce sales data,
11 which would deprive Plexxikon of the reasonable royalty to which it is statutorily entitled for those sales.
12 *See Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1212-13 (Fed. Cir. 2010) (plaintiff entitled
13 to additional damages for infringing sales that the jury did not consider preceding entry of judgment).
14 Plexxikon's version of this question is clear and correct, and should be adopted.

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1 **II. NOVARTIS'S POSITION**

2 Novartis opposes Plexxikon's proposed additions of language to Question 6. Plexxikon proposes
3 to include the phrases "of damages" and "through the last date of sales data" (both in the question and
4 answer choice). Novartis opposes both.

5 As to the former, the phrase "damages you found in Question 5" does not follow from the text of
6 Question 5, which is directed to a "sum of money [that] would fairly and reasonably compensate
7 Plexxikon" but never mentions "damages." In any event, the language is superfluous and should be
8 omitted for that independent reason.

9 As to the latter, the phrase "through the last date of sales data" is prejudicial in that it suggests
10 particular evidence that the jury should consider in making its royalty calculation and the period through
11 which the jury should make its award. Because Plexxikon's damages model depends on per-year sales
12 data, whereas Novartis's is sales-independent, pointing to "sales data" improperly suggests to the jury
13 that it should use Plexxikon's damages model. Plexxikon's proposed inclusion should therefore be
14 omitted as prejudicial.

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1 Dated: October 18, 2019

DURIE TANGRI LLP

2 By:

/s/ Daralyn J. Durie

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20 *Attorneys for Plaintiff Plexxikon Inc.*

1 Dated: October 18, 2019

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36 *Novartis Pharmaceuticals Corporation*

1 **ATTESTATION PURSUANT TO CIVIL L.R. 5-1(i)**

2 In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this
3 document has been obtained from any other signatory to this document.

4

/s/ Daralyn J. Durie
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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2019 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

/s/ Daralyn J. Durie
DARALYN J. DURIE